

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re:	§	
PHILIP EMIABATA,	§	Bankruptcy Case No. 09-37104-13
Debtor	§	

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PHILIP EMIABATA,	§	<b>CIVIL ACTION NO. H-09-3547</b>
Appellant.	§	

**MEMORANDUM AND ORDER**

This bankruptcy appeal is before the Court on the Motion to Dismiss Appeal (“Motion”) [Doc. # 2] filed by secured creditor Bank of America, N.A. (“BOA”). By Order [Doc. # 4] entered November 20, 2009, Appellant Philip Emiabata was directed to file any opposition to BOA’s Motion by December 14, 2009, and was cautioned that failure to respond could result in dismissal of this appeal. Appellant neither filed a response in opposition to the Motion nor requested additional time to respond. Because the collateral has been sold, the appeal is moot and BOA’s Motion is **granted.**


On September 28, 2009, Appellant filed a voluntary petition under Chapter 13 of the Bankruptcy Code. BOA held a claim secured by Appellant’s 2007 Hummer H2 (the “Collateral”). BOA obtained relief from the automatic stay, and Appellant filed

a Notice of Appeal from the Lift Stay Order. BOA foreclosed on and sold the Collateral at auction to a third party good faith purchaser for value.

BOA argues that the appeal should be dismissed as moot because the property has been sold. To preserve an appeal from an order of the bankruptcy court lifting the automatic stay and allowing collateral to be sold, the debtor “must obtain a stay pending appeal.” *Matter of Sullivan Cent. Plaza I, Ltd.*, 914 F.2d 731, 733 (5th Cir. 1990). “If the debtor fails to obtain a stay, and if the property is sold in the interim, the district court will ordinarily be unable to grant any relief [and] the appeal will be moot.” *Id.* Because the Collateral in this case has been sold in the absence of a stay, the appeal is moot. It is, therefore,

**ORDERED** that BOA’s Motion to Dismiss Appeal [Doc. # 2] is **GRANTED** and this appeal is **DISMISSED AS MOOT**.

SIGNED at Houston, Texas, this **23rd** day of **December, 2009**.

  
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Nancy F. Atlas  
United States District Judge